

14.02.00.00 - CRITERIA FOR CERTIFICATION

14.02.01.00 Prerequisites

Prior to issuing a R/W Certification, district R/W should review the draft district PS&E and PS&E submittal report to confirm pertinent data. R/W Engineering staff normally perform this review, which includes such items as:

- Project identification (Co.-Rte.-KP-EA).
- Federal Aid Project Number.
- Location description.
- Work description.
- Special provisions relating to utility, railroad, and right of way clearance coordination.
- Confirmation that right of way construction contract obligations are properly included in the PS&E.
- Confirmation that the right of way as shown on the construction plans is consistent with district R/W records.

14.02.02.00 Timing of R/W Certification

14.02.02.01 Office Engineer

R/W Certifications should be included with the PS&E packages at the time of submittal or sent as soon as possible after receipt of the project PS&Es by Headquarters Office Engineer. In either case, the district Office Engineer should coordinate submittal of R/W Certifications to Headquarters. R/W Certifications sent to Headquarters Office Engineer after submittal of the PS&E package should be sent to the attention of the Scheduling Engineer.

A copy of the signed original district R/W Certification should be sent to the district Office Engineer no later than two months prior to the proposed advertising date. If Certification has not been received by the fifth week prior to the proposed advertising date, the project will not be listed for advertisement as scheduled unless prior arrangements have been made through the district or Headquarters Office Engineer to list the project as "Right of Way Due." Listing of projects for advertisement as R/W

Certification "due" will be used only in exceptional cases. When used, the district shall provide written assurance that the R/W Certification will be received by the Office Engineer on a date certain but not less than 15 working days prior to the scheduled advertising date.

In those exceptional cases where a project is advertised on a Certification No. 3, the Certification No. 1 or 2 must be received a minimum of 15 working days prior to the **bid opening** date. In those rare cases where a Special Certification No. 3 with Work-Around is used, an updated Special Certification No. 3 with Work-Around (dated and signed) shall be submitted to the O.E. no later than 15 working days prior to **bid opening**.

Any Certification containing events with completion or effective dates that occur after the Certification date but before the award date of the project construction contract shall be updated. These events include the effective date of any Rights of Entry, Orders for Possession, utility relocation completions, RAP vacations, etc. The updated Certification shall be distributed to the same individuals and offices as the original Certification.

14.02.02.02 FHWA

Where federal funding will be used in any portion of a project, the FHWA, Federal Transportation Engineer (T.E.) must have a Certification No. 1, 2, or a Right of Way Certification with a Work Around, (UPDATED* Special Certification No. 3 with Work-Around) in its possession a minimum of 15 working days prior to the FHWA "Authorization to Proceed" (concurrence and award) date. This authorization is given by the T.E. prior to the award of the construction contract. The HQ Budgets Program, Federal Aid Resources, is responsible to forward all required Certifications to FHWA.

***Special Certifications #3 with a work around condition will require conceptual approvals through HQ R/W Program prior to use.
See Section 14.02.07.00.**

14.02.03.00 **Criteria for R/W Certification**

Right of Way Certification formats can be found in Exhibits 14-EX-3 through 14-EX-10, and 14-EX-13.

14.02.03.01 **R/W Certification No. 1**

To certify the project under a Certification No. 1 (See Exhibit 14-EX3), the DDC-R/W must assure that the state has full legal and physical possession of all necessary rights of way , including control of access rights when pertinent and the right to remove, salvage, or demolish any improvements remaining on the right of way because:

- All work is within existing right of way acquired for a previous construction project, and all new work will be within that existing right of way; OR

Acquisitions are complete (escrows closed and/or Final Orders of Condemnation recorded); AND/OR

- There are effective Orders for Possession on **all** remaining unacquired parcels. AND all occupants have vacated the lands and improvements. AND
- Relocation assistance and payment requirements have been met. AND
- All necessary material and disposal sites have been secured. AND
- All R/W clearance, utility, and railroad work has been completed, or all necessary arrangements have been made (e.g., Utility Notices issued, demolition contracts awarded, and railroad contracts executed) for the work to be undertaken and completed as required for proper coordination with the physical construction schedules.

14.02.05.0 **R/W Certification No. 2**

Requirements for R/W Certification No. 2 (Exhibit 14-EX-3) are the same as for Certification No. 1 except the States' right to occupy and use one or more parcels are by virtue of effective Rights of Entry, or an Agreement for Possession and Use. Similar documents, such as a permit, license, or an approved R/W Contract with effective right of

possession date also require the use of a certification No. 2

14.02.05.00 **R/W Certification No. 3**

Certification No. 3 (Exhibit 14-EX-3 and 14-EX-7) may be used on a limited basis when believed to be in the public interest, and the CTC approves a Resolution of Necessity on all those parcels yet to be acquired. This exception must never become the rule.

Every R/W Certification No. 3 must be accompanied by memorandum from the district containing the information below, and a copy of this memorandum must be included in or attached to the Certification (also see Section 14.01.06.00).

- **Full justification** for using a Certification No. 3, including an outline of the very unusual circumstances that require early advertisement.
- **Full written explanation** of why the Certification is a No. 3 (rather than a No. 1 or No. 2) along with a realistic date when physical occupancy and use is anticipated and substantiation that such a date can be met.

The DDC-R/W shall consider very carefully whether a Certification No. 3 is really necessary for a specific project. Additional background to justify the Certification No. 3 may be requested from the Project Manager or whoever in the district is requesting R/W to certify the project. Justification might include reasons such as:

- Weather considerations.
- Construction windows.
- Source of funds (other than federal aid) to be lost.
- Construction dollar savings by earlier advertisement.

Requirements are the same as for Certification No. 1 except that legal possession or right of occupancy and use of a few remaining parcels is not complete. When Certification No. 3 is used, the Certification itself must contain the following additional information, as applicable:

- A statement that all remaining residential occupants have had replacement housing made available to them in accordance with R/W Manual Chapter 10, Relocation Assistance.
- A statement assuring that occupants of residences, businesses, farms, or nonprofit organizations who have not yet moved from the right of way are protected against unnecessary inconvenience and disproportionate injury or any action coercive in nature.

NOTE: A statement as to these assurances and the date when the contractor may enter the affected property must also appear in the bid documents.

- Identification of each parcel on which legal possession, and/or right of occupancy and use, has not been obtained. Appropriate notification shall be provided in the bid documents identifying all locations where state's right of occupancy and use has not yet been obtained.
- Anticipated actual dates when legal possession and physical occupancy and use will be obtained with substantiation that such dates are realistic. A copy of the executed Order for Possession or Right of Entry may be attached to satisfy this requirement.

14.02.05.01 **Standard Usage**

The CTC Resolution of Necessity is the minimum requirement for a Certification No. 3. Although this is the minimum requirement, using Resolutions of Necessity to certify a project should occur only in exceptional circumstances, such as safety, emergency, or other similar work.

Exceptional use of a Certification No. 3 occurs when:

- Orders for Possession have been served but are not yet effective, and/or
- Rights of Entry, or Agreements for Possession and Use, have been executed but are not yet effective.

Thus, the date required in Section 14.02.06.01 above can be met without question only after an Order for Possession has been received, filed, and served or a Right of Entry has been signed.

Another use for a Certification No. 3 occurs when all parcels are acquired or have an effective Order for Possession or Right of Entry and all occupants have vacated but personal property remains on one or more parcels. In this case, the state has legal, but not physical, possession of the required right of way. The RAP section of the Certification No. 3 must provide an explanation of what personal property remains in the right of way, why it still remains, and how and when it will be removed.

Except for Special Certification No. 3W described IN Section 14.02.07.00 a project may be advertised, but bid proposals will not be opened until the Certification No. 3 has been raised to a No. 1 or 2. The anticipated date of legal and physical possession (see Section 14.02.06.01 above) is crucial because it is needed to set appropriate advertising, bid opening, and contract award dates.

In those exceptional cases where a project is advertised on a Certification No. 3, the Certification No. 1 or 2 must be received by the O.E. a minimum of 15 working days prior to the **bid opening** date.

14.02.06.00 **Special Certification No. 3 With Work-Around**

This special R/W Certification No. 3 (Exhibit 14-EX-9) may be used only in the most extraordinary circumstances. The district must show there is a critical need to advertise and award the project and describe in detail the extraordinary circumstances. If federal funds are involved in any portion of the project, including construction, conceptual approval of the work around must be obtained, by HQ RW from FHWA in advance of certifying the project for advertising..

This Certification will allow physical construction of a project to commence while occupants of residences, businesses, farms, or nonprofit organizations remain within the right of way. All occupants of residences must have had replacement housing made available to them in accordance with R/W Manual Chapter 10, Relocation Assistance.

When a district initially proposes to use this type of Certification, it must send a request memorandum to HQ R/W Project Delivery Office at least two full months prior to the required Certification date. The memorandum must explain the district's concept of how necessary arrangements can be made and the reasons why this type of Certification is needed. HQ

R/W will obtain FHWA's written approval as necessary.

A draft Certification (dated, but not signed) must be attached to the district's request memorandum. Approval to use this type of Certification No. 3 shall not be made unless the district can show substantial guarantees that vacation, possession, and clearance dates are completely realistic and enforceable.

When the approval memo is received from FHWA, the district will issue a signed Certification. Copies of the signed Special Certification No. 3 shall be sent to the Office Engineer in accordance with Section 14.02.02.01. A copy of FHWA's advance approval memorandum will be attached to and become part of the Certification. A copy of the Certification and FHWA's memorandum will be sent to HQ R/W, Project Delivery Office (see Exhibit 14-EX-12).

Although this Certification need **not** be raised to a Certification No. 1 or No. 2, an "Updated" Special Certification No. 3 with Work-Arounds (dated and signed) must be sent to the O.E. no later than 15 working days prior to bid opening.

14.02.06.01 R/W Clearance

Clearance work to be performed is listed on the R/W Certification as usual, except that occupied structures must be noted. Work-around times and how coordination with the contractor can be achieved must be explained in the Certification giving reasons therefor and approximate dates for clearance work and how it will be accomplished. (Also see Section 14.03.09.00.)

If **occupied, non-salvable** improvements are to be left in the right of way until they are vacated, it is preferable to include demolition in the highway construction contract. The resident engineer must be notified when the improvements have been vacated. Separate demolition contracts running concurrently with the highway contract **cannot** be used.

Appropriate notification shall be provided in the contract special provisions when clearance cannot be completed on **salvable** improvements prior to start of construction on the project. (Usually because it is not feasible or practical due to economy, remaining occupants, or special operational problems.) The R/W clearance work that others are to accomplish concurrently with the construction project must be clearly identified..

The State may sell salvable improvements in advance of vacation by the occupants. For example, the buyer of the improvements may be asked to agree to start removal of improvements with 10 days notice and to complete removal within a certain number of days. Adequate time must be included in the work-around provisions to allow for both vacation by occupants and removal of improvements.

If the construction contractor is to demolish or remove any **salvable** improvements, the district R/W Clearance section must follow all procedures in R/W Manual Chapter 12 regarding appropriate levels of approval. A copy of the approval memorandum must be attached to the R/W Certification. Inclusion in bid documents and notification of Resident Engineer as outlined above are also required.

14.02.06.02 Certification Statements

The following Certification statement is used on the initial submittal of a Special Certification No. 3:

"I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3). The project may be advertised at any time. Approvals are attached for the work-around. Appropriate notification has been included in the bid documents. An updated Special Certification No. 3 will be provided by (date) ."

The following Certification statement is used on the "Updated" Special Certification No. 3 required no later than 15 working days prior to bid opening:

"I hereby certify the right of way on this project as conforming to 23 CFR 635.309(c)(3). The project has been advertised and the contract may be awarded. Approvals are attached for the work-around. I have confirmed that all appropriate notifications have been included in the bid documents concerning said work-around."

14.02.07.00 R/W Certification Approval and Distribution

After the Certification is prepared in accordance with the current status of the property rights, it must be approved by the DDC for R/W or the delegated representative. RW will submit the original to Project Development and distribute copies of the Certification to the Certification file, the Office Engineer (HQ, district or region), the Design Engineer, and others as appropriate

14.02.07.01**Submitted With PS&E
Submittal**

The DDC-R/W shall:

- Deliver (address) the R/W Certification to the District Director, Attention DDC-Project Development, at the earliest date possible after receiving the request to certify the project, but no later than two months prior to the proposed advertising date. The R/W Certification is then attached to the PS&E submittal for delivery to the Office Engineer.
- Obtain HQ R/W advance approval for any deviation in the Certification requirements as set forth in Section 14.01.06.00.
- Obtain advance approval, through HQ R/W, for authority to issue a "Special Certification No. 3 with Work-Around" and secure concurrence, as necessary, from district Project Development and Construction.
- Coordinate with district Project Development concerning the status and expected delivery date of a Certification to meet tentative advertising dates.
- Report immediately to district Project Development any changes in the status and expected delivery date of a Certification that will affect the district's ability to meet the scheduled advertising date. Approval of and input into PMCS for Certification dates should be coordinated at this time.

NOTE: For the above two Items, a the R/W Project Coordinator should be responsible for reporting on the status of all projects nearing projected delivery dates to the Project Managers.

- Notify the DDC-Project Development, Project Manager, Headquarters Office Engineer, and the district Office Engineer, in writing that a Certification is rescinded or changed because of right of way reasons (see 14.01.04.02).
- Make arrangements with district Project Development to notify district R/W when a project is canceled.

When a Certification is revised, a R/W Certification No. 3 is elevated to a No. 1 or a No. 2, or the status

of a "Special Certification No. 3 with Work-Around" is updated, the district shall provide the following at least 15 working days prior to a bid opening.

- Facsimile a copy of the new executed Certification to Headquarters Office Engineer and deliver the Certification to the district Office Engineer.
- Provide district Project Development, Project Manager with a copy of the new executed Certification.
- Provide HQ R/W with a copy of the new executed Certification if they received the original..
- For projects that have been listed for advertising and include federal-aid RW or construction funds, provide two copies of the new executed Certification to either Headquarters Federal Resources or Headquarters Office of Local Programs, as appropriate. The DDC-R/W shall be responsible for determining which of these units should receive the Certification.

See Exhibit 14-EX-12 for R/W Certification approval, distribution, and time schedule.

14.02.07.02**Not Submitted With PS&E
Submittal**

If the initial R/W Certification cannot be prepared in time to accompany the PS&E submittal, the DDC-R/W shall provide written notification to the District Director, Attention DDC-Project Development, of the anticipated Certification level (No. 1, 2, 3, or 3 with Work-Around) and the realistically anticipated date of Certification delivery. This information is required in the PS&E submittal memorandum.

When the Certification is ready to be issued, the district should address it to the District Director, Attention DDC-Project Development, and facsimile a copy of the original Certification to the Office Engineer.

For projects where federal-aid construction funds are anticipated, and when the project appears on the "Projects Tentatively Proposed for Advertisement" list, and no later than 15 working days prior to the proposed advertising date, the district should provide two copies of the original Certification to either

Headquarters Federal Resources or Headquarters
Office of Local Programs, as appropriate.

See Exhibit 14-EX-12 for R/W Certification
approval, distribution, and time schedule.